LANDLORD AND TENANT—COVENANT TO REPAIR—DUTY TO REMEDY PRIOR EXISTING OPEN STAIRWAY.—The defendant leased a basement to be used as a pool room, covenanting to "keep the building in repair during the term of the lease." The lessee was damaged by the entrance of snow and sleet through an open stairway which had been constructed prior to the lease. *Held,* that the plaintiff could recover. *Midkiff v. Benson* (1921, Tex. Civ. App.) 235 S. W. 292.

It is well settled that there is no implied warranty of the condition of the premises by the lessor. Therefore the lessee, under ordinary conditions, cannot complain that at the beginning of the tenancy the premises were not in a tenantable condition, or that they were not adapted to the business for which they had been leased. *Kutchera v. Graft* (1921, Iowa) 184 N. W. 297; *Little Rock Ice Co. v. Consumers' Ice Co.* (1914) 114 Ark. 532, 170 S. W. 241; *Valin v. Jewell* (1914) 88 Conn. 151, 90 Atl. 36; 1 Tiffany, *Real Property* (1920 ed.) 136. Consequently, in the absence of an express covenant, the lessee cannot demand that the lessor make any repairs in the premises which are necessitated by the peculiar nature of the lessee's business. The obligation of the landlord to repair always rests upon a covenant to that effect, and without such a covenant the landlord is neither under a duty to make repairs, nor to pay for such repairs as may be made by the tenant. *Daggett v. Panebianco* (1921, Neb.) 184 N. W. 177. When such a covenant exists, notice of the want of repair is a condition precedent to the landlord's duty. *Marr v. Dieter* (1921, Ga.) 109 S. E. 532. It is essential, however, that a distinction be made between cases where the lessee demands improvements of a constructive nature, and where he merely wishes the premises to be kept wind and water tight. *Lovejoy v. Townsend* (1901) 25 Tex. Civ. App. 385, 61 S. W. 331. Thus a lessor has been held to have been under no duty to strengthen the floors and construct new girders because of the use to which the tenant had put the demised building. *Gregory v. Manhattan Briar Pipe Co.* (1916) 174 App. Div. 106, 160 N. Y. Supp. 916. From the facts given in the principal case, it seems that the basement entrance was not sufficiently well built to exclude the water which was accustomed to accumulate in the area-way. Therefore, the lessor was clearly under a duty to repair this entrance, and was liable for the loss suffered by the plaintiff.

MUNICIPAL CORPORATIONS—INVALID CONTRACTS—RECOVERY IN QUASI-CONTRACT.—During a conflagration which endangered the city of Atlanta, the fire chief, at the instance of citizens, wrote out an order to the plaintiff company for Pyrene fire extinguishers, which he then used in fighting the fire. The city later refusing to pay, the plaintiff sued in alternate counts of contract or quasi-contract for the value of the extinguishers. *Held,* that the plaintiff could not recover. *Pyrene Manufacturing Company v. City of Atlanta* (1922, Ga. App.) 110 S. E. 408.

Three types of invalid contracts may result when dealing with a municipal corporation. See NOTES (1904) 4 COL. L. REV. 67; (1910) 9 MICH. L. REV. 671. The first is the truly *ultra vires* contract, where either the subject matter is "beyond the power" of the city, or where the manner of making it is specifically limited (as for example by bid). *Gamewell Fire Alarm Co. v. City of Los Angeles* (1919, Calif.) 187 Pac. 163. The second is within the power of the city to make in a specified way, which has not been complied with in some *detail,* not the essence of the regulation. *McGovern v. City of Chicago* (1917) 281 Ill. 264, 118 N. E. 3. The third is where a municipality which may contract in general, with no manner specified, has done so irregularly (as, for example, by the mayor alone, rather than by the city council). *Cade v. Belington* (1918) 82 W. Va. 613, 96 S. E. 1053. In the three classes, the courts are uniform in refusing a right of action on the contract (except in the third, if later ratified), and they are equally uniform in recognizing a right of "restitution in specie." *Staebler v. Town* (1919)

186 Ky. 124, 216 S. W. 348; *Floyd County v. Allen* (1910) 137 Ky. 575, 126 S. W. 124; 27 L. R. A. (N. S.) 1125, note. But as the latter generally does not fully compensate the plaintiff, an action in quasi-contract is often attempted. Here unanimity of judicial opinion ceases. Municipal corporations were early subject to the same duties for benefits received as were individuals, so that recoveries in quasi-contract were permitted in any of the three classes. *Argenti v. City of San Francisco* (1860) 16 Calif. 256. Perhaps due to the nefarious character of certain types of agreements, the courts changed their position, so that today in the first class of cases a recovery in quasi-contract is seldom permitted. *Reams v. Cooley* (1915) 171 Calif. 150, 152 Pac. 293; Ann. Cas. 1917 A 1260, note; (1920) 34 HARV. L. REV. 439. In the second class of cases there is a growing minority which grants a recovery in quasi-contract, for the reason that the policy of controlling the city's contract power is obviously less endangered. For the same reason, in the third class the greatest proportion of recoveries against the city in quasi-contract is allowed. The plaintiff in the instant case ought to be able to recover in quasi-contract from the individual citizens who used the extinguishers to save their homes, arguing from the analogy of cases where goods have been furnished a defendant at his request, in the mistaken belief of the existence of a valid contract with him—here with a third person, the municipal corporation. *Vickery v. Ritchie* (1909) 202 Mass. 247, 88 N. E. 835; 26 L. R. A. (N. S.) 810, note. But the plaintiff would have to sue innumerable defendants—if he could find them—and to recover in specie from the city would be to receive some empty extinguishers, or their value when emptied. It is submitted that the policy reflected in the increasing responsibility of a municipality for its torts should permit a recovery in quasi-contract, on the usual principles of equity and good conscience, where, as here, none of the elements which should bar recovery in any one of the three classes exists. COMMENTS (1919) 29 YALE LAW JOURNAL, 911; NOTES (1920) 20 COL. L. REV. 772. It should certainly be permitted if the case is of the second or third type, and perhaps it should be so even if it is of the first, where the facts as here, show good faith, no attempt to overburden the municipality, a serious emergency which made the fire chief an agent by necessity, and undoubted benefits received by the municipality through its citizens. See *Frank v. Board of Education* (1917) 90 N. J. 273, 100 Atl. 211; *Sheehan v. City* (1902, Sup. Ct.) 37 Misc. 432, 75 N. Y. Supp. 802.

RAILROADS—ADVERSE POSSESSION—USE OF PART OF PUBLIC HIGHWAY.—Under a statute authorizing railroad companies to cross highways but imposing the duty of restoring the highway "as near as may be to its former state so as not unnecessarily to impair its usefulness . . . . and as may be satisfactory to the Commissioners of highways of the town" in which the crossing was desired (N. Y. Laws, 1848, ch. 195, sec. 5), the defendant, sixty years before, when the community was rural, had built abutments for an overhead crossing and had continuously paid taxes upon the land covered. The district became incorporated in the plaintiff city, which brought an action to compel the company to remove the abutments. *Held,* that the defendant must remove the abutments. *City of Mount Vernon v. N. Y., N. H., & H. Ry.* (1922) 232 N. Y. 309, 133 N. E. 900.

By the weight of authority an individual or corporation cannot gain rights in a public highway or street by adverse user or possession; and, as a corollary, public officers cannot without legislative authority confer such rights upon an individual or corporation. *Driggs v. Phillips* (1886) 103 N. Y. 77, 8 N. E. 514; *Delaware, L. & W. Ry. v. City of Buffalo* (1899) 158 N. Y. 266, 53 N. E. 44. In many jurisdictions, however, including some which follow the above rule, it is held that a municipal corporation may be estopped from asserting its rights in a portion of a street where permanent improvements have been made or money